SUPREME COURT, U.S.
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In the Supreme Court of the United States

Theodore Patrick Coates,

Petitioner,

v

The Office of Attorney Regulation Counsel for the People of the State of Colorado (Original Proceeding in Disability from the Office of the Presiding Disciplinary Judge, 2009PDJ038) and the Honorable William R. Lucero,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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Question Presented

Whether or not Colorado State Supreme Court rules, and how they were applied by state personnel to administratively adjudicate Petitioner as being unfit to practice law due to profound mental illness, violated fundamental rights of the Petitioner, including his rights to property, financial livelihood, his rights to privacy and to freedom of speech.

List of Parties and Corporate Disclosure

Pursuant to Sup. Ct. R. 14.1(b), the Parties to the proceeding in the court whose judgment is sought to be reviewed are as follows:

1. Petitioner Theodore Patrick Coates
2. Respondent Office of Attorney Regulation Counsel for the State of Colorado.
3. Respondent William R. Lucero, Jr., the Presiding Disciplinary Judge serving in an administrative post for the Colorado Supreme Court.

Corporate Disclosure Pursuant to Sup. Ct. R. 29.6

None of the Parties to this proceeding are corporate entities. The Office of Attorney Regulation Counsel is an administrative creature of judicial-made law which exists as a sub-governmental entity operating exclusively under rules promulgated by the Colorado State Supreme Court.

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An Order and Decision of the Presiding Disciplinary Judge dated November 10, 2009 and a January 21, 2011 Order and Mandate of the Supreme Court of the State of Colorado affirming the November 10, 2009 Order of the Presiding Disciplinary Judge can both be located in Appendix A to this Petition.

I. Basis for Jurisdiction

The Supreme Court has jurisdiction to review the January 21, 2011 Order and Mandate of the Supreme Court of Colorado affirming the November 10, 2009 order of the Presiding Disciplinary Judge and to issue a writ of certiorari to the Colorado Supreme Court pursuant to 28 U.S. C. § 2101(c).

II. Statutory Provisions at Issue

The following statutory provisions are involved in this case: (a) C.R.C.P. § 251.1 *et. seq.* of the Colorado Rules of Civil Procedure, (b) the text of any relevant provisions of Colorado state law set forth as judicially-promulgated rules of the Colorado Supreme Court, which rules have the full force and effect of law for purposes of this appeal, and (c) such state rules as are recited in, or form the authoritative basis underlying for, the orders,

decisions and mandates made part of Appendix A hereto.

III. Statement of the Case

A. Jurisdiction in the First Instance

Pursuant to Section 21 of Article VI of the Colorado State Constitution, the Colorado Supreme Court has jurisdiction and authority to promulgate *procedural* rules regulating the conduct of civil litigation, including rules regulating the licensing status of attorneys practicing in Colorado state courts in Colorado. By sub-rules underneath such general constitutional authorizations and such general grant of power by the people in the state governing charter is: the Colorado Supreme Court's authority to hear and decide issues arising (a) in attorney conduct matters (grievance and disciplinary matters which implicate the attorney's oath) and (b) in cases involving allegations by anyone that an attorney is so mentally disturbed and/or mentally disabled as to be unable to practice law.

However, the Colorado state constitution delimits authority to establish tribunals and courts inferior to the state supreme court. It grants court-making authority solely to the general assembly under the vestment of powers provisions of Article VI and Article III of the state constitution. Because, in this instance, the Supreme Court of Colorado itself created a court-within-a-court with its creation of the court of the Presiding Disciplinary Judge ("PDJ"), such creation is probably an *ultra vires* act

by the state supreme court. As such, the orders issued by the PDJ's court may be void as a matter of state constitutional law because the PDJ's orders issue from an 'extra-constitutional' tribunal/court created by the 'wrong' department of the state government.

B. Description of the administrative framework in which attorney disability cases are heard and how state officials are used to investigate and adjudicate the status of Colorado attorneys in cases where the attorney is accused of being mentally disabled

General authority on judicial matters of procedure and the power to adopt rules of procedure for state courts is granted to the state of Colorado's 'judicial department'[1] by Article VI of the Colorado state constitution. Sub-authority thereunder is, in turn, delegated by the state Supreme Court by rule of court, C.R.C.P. § 251.16, to a court-created administrative position, the Office of the Presiding Disciplinary Judge (hereinafter the "PDJ"), subject to review of the state supreme court itself.[2]

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[1] The Colorado state constitution refers to the judicial wing of state government, not as a 'branch' of state government, but rather as the judicial *'department'* for the state government Thus the Colorado state supreme court is not, under the Colorado state constitution, conferred with legal status as a separate 'branch' of state government as such, it being merely a separate 'department' thereof Article VI of the Colorado State Constitution

[2] This state constitutional structure as it exists in Colorado in the form of the PDJ court is in sharp and important contrast to the federal structure governing and policing the federal

The judicial power, both appellate and original, lodged by the state constitution in the supreme court, cannot be transferred to another court created by the general assembly in any manner so as to make its decision and opinions final. Section one of Article VI of the state constitution clearly recognizes two kinds of courts, viz.: First, those established by and expressly enumerated in the constitution itself: and second, such other courts *as the general assembly* may at its pleasure from time to time create. *People ex rel. Attorney Gen. v. Richmond*, 16 Colo. 274, 26 P. 929 (1891). (Emphasis added).

Furthermore, the jurisdiction allocated to the courts created by the general assembly pursuant to constitutional authority is a matter for the general

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judiciary and federal court system Under Section 1 of Article III of the U S Constitution inferior federal courts must be established *by Congress*, and not by the U S Supreme Court itself In Colorado, the inferior (administrative) PDJ administrative court, at issue in this appeal, was created, not by the state legislature, but by the superior state court itself Thus the PDJ administrative court and its prosecutorial functions as they relate to lawyers accused, rightly or wrongly, of being unfit to practice law due to alleged mental illness, functions outside the normal oversight function of the state legislature. The PDJ and OARC process and its confidential, even secret operations, acts as a kind of 'shadow' administrative court structure within the state judicial system and it enjoys, thereby, a kind of 'above the law' status in the state court system The rules and structure of the PDJ court and its operations were not developed by way of amendment process (to the state constitution) but rather as a result of *sua sponte* rule-making of the state supreme court

assembly to determine. *Denver County Court v. Lee*, 165 Colo. 455, 439 P.2d 737 (1968).

For purposes of the proceedings below the OARC, PDJ court and the Colorado state supreme court obviously operated under the assumption that the PDJ court and its processes it used alongside the OARC against the Petitioner were not extra-constitutional. Thus, on January 21, 2011, the state supreme court did not treat the November 10, 2009 order of the PDJ (Appendix A) as a void order issued by an extra-constitutional court of its own creation.

Under C.R.C.P. § 251.16 (also part of the judicially created rules framework) the PDJ serves 'at the pleasure of the Supreme Court.' Under such rule and further sub-rules in that section of the rules, the PDJ may hold public or private offices while simultaneously serving as PDJ so long as the PDJ and his court do not sit on and decide various cases in which one the PDJ's law colleagues is directly involved. [3] Thus, the PDJ, as an

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[3] The OARC and PDJ publicly proclaim on their web site and elsewhere they are solely funded by fines and penalties imposed against errant lawyers and additional funds can be sourced back to licensing fees or a portion of the license fees annually paid by licensed attorneys in Colorado. These published representations invite the idea (in the minds of the public) that the OARC and PDJ functions are somehow not state government financed functions under C.R.C.P. 252.3. Yet, all disability cases prosecuted by the ORAC and heard by the PDJ are brought to the PDJ court by the OARC under a caption announcing the plaintiff to be "The People of the State of Colorado". The OARC acts as representative and prosecutor

administrative employee of state government and of the state supreme court, has a unique status under Colorado judicial-created laws and rules, namely the PDJ is not, nor is his court, for instance, subject to the normal rules of voter retention election process applicable to all other judges in Colorado and applicable to justices serving in the state appellate courts in Colorado.

Other procedural and legal authority is granted by the state supreme court, by rule, to an Office of Attorney Regulation Counsel (hereinafter "OARC") which also serves at the pleasure of the state supreme court. OARC staff and legal personnel serve as employee-functionaries underneath the PDJ and his administrative offices and serve the PDJ's court. The role of the OARC personnel (in addition to their role as prosecutor in attorney discipline cases) is to prosecute persons like Petitioner who have been accused by the state of being unfit to practice law due to being mentally ill and are therefore 'unfit' for law firm practice.

Under C.R.C.P. § 251.23 the PDJ has unfettered authority to nominate and appoint his

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for the state as against, as here, at risk adults placed in such 'at risk' status by the state's allegations lodged against the accused lawyer C R C.P 251 27. The only check and oversight available to Petitioner at this post-state-court appeal juncture with respect to this unbridled and abusive taxpayer-funded process (as it applies to disability cases, at issue in this appeal) is this high Court. Petitioner does not have the power to disturb the status quo of the disability rules framework, but this high Court does have such power

own witness/IME, as he did in the Petitioner's case below, to render such medical opinions as the PDJ may seek so to create an evidentiary basis to later support whatever decision of the PDJ reaches in a disability case before him, such as in Petitioner's case.

The OARC argued in their response brief in the state court appeal (the 09SA359 case) by Petitioner to the Sate Supreme Court that Petitioner has no standing whatsoever to challenge the constitutionality of the PDJ and OARC rules framework, either facially or as applied. And that furthermore, the rules themselves (i.e., C.R.C.P. 251.34), the OARC argued for the PDJ and for the state, authorize only certain court-designated persons appointed by the supreme court to recommend changes to the disability rules if such appointed panels should ever wish, on their own, somehow, to take up that task which only they or the Court itself may initiate.

This 'above the law' kind of operation for a state court operating outside the normal state constitutional checks and balances channels led, in many instances below, to process abuses by the PDJ court/tribunal which were exploited by the OARC in their prosecution of Petitioner during his disability proceedings. For example, Petitioner, in many instances, was given only a few hours notice by telephone call from the PDJ court that Petitioner was to interrupt his work day at the office and appear (or else) at yet another of numerous status

conferences and proceedings held in the PDJ court in the run up to the eventual trial in October 2009.

Throughout the disability process Petitioner was left with the impression he was simply being railroaded by, and became the victim of, a 'political hatchet job' of a sort. It was orchestrated by state personnel combining their efforts against him and functioning outside the normal expected process protections available to litigants in the general assembly-created court process in Colorado in which Petitioner has labored for so many years.

Under the same set of rules (for example C.R.C.P. § 251.30) the state can, and routinely does, compel the lawyer to release his medical records to the OARC staff and personnel and to the PDJ and can further compel the accused lawyer to waive all his rights to privacy and other protections as a condition of reinstatement to active status for practicing law in the state court system. Additionally, during all the proceedings conducted in and orchestrated by the OARC and the PDJ there is much ongoing informality and ex-parte contact between the two offices (the OARC and the PDJ) as a matter of common knowledge to lawyers who go through the PDJ court/OARC process or who work within the system.

After the lawyer has released all his own and his family medical and insurance records, OARC process and the PDJ (along with the state paid IME witness hired by the PDJ) proceed after that to undertake a fishing expedition of a sort to 'cherry

pick' through the accused attorney's medical history. During that fishing expedition they find, or fail to find in the Petitioner's case, something and anything which supports the PDJ's state paid for IME's (the IME himself being a state employee doctor) claims that the attorney is profoundly mentally ill or has a history of treatment for mental disorders.

Under that same rules framework the PDJ and OARC offices operate as 'dual function' offices, cloaked with authority to investigate and later adjudicate (in a three-judge panel setting) the group of cases falling within the 'discipline' category, and, secondly, and most importantly, the PDJ serves *alone* as *sole judge* when he is sitting as the administrative judge in the PDJ court when he hears and adjudicates allegations, brought by the state, that a lawyer is so mentally ill and disabled as to be unfit to continue in law practice in state courts.

In the case below, the PDJ engaged the services of a state employee psychiatrist (hired by the PDJ to report to the PDJ) to examine the Petitioner. The PDJ ordered Petitioner to submit to the state employee's examination for six hours and more at the offices of the state employee/psychiatrist (which took place in June 2009). The PDJ provided the IME with various selected pleadings, motions and papers filed between December 2007 and May 2008 in a federal court case (the 07cv1908 in the U.S. District Court case for the District of Colorado).

In Petitioner's situation below, under C.R.C.P. 251.30, after the investigation and prosecution phase is completed and an order was entered placing the

Petitioner on disability inactive status, the PDJ, relying on the judgments of his IME, made it clear that he was conditioning Petitioner's reinstatement to active law practice (based on the state paid IME's testimony and reports to the PDJ) in state court on two things, namely: (a) proof satisfactory to the PDJ and his IME that the Petitioner is on psychotropic drugs or other mind altering chemicals, and (b) that as a result of then being on such chemicals the Petitioner can demonstrate to the satisfaction of the PDJ's hand-picked IME, the state employee geriatric doctor, that the Petitioner's thinking has been altered to a state of mind acceptable to the IME and the PDJ.

The altered state of mind of the Petitioner which would have to be demonstrate during later reinstatement proceedings, if any, it was made both loud and clear to the Petitioner, would have to be so sufficiently re-arranged as to satisfy the then subjective demands of the state paid IME and the PDJ. Petitioner's mental state and psychiatric profile thus would have to be adequately altered by drugs and chemicals, as a condition of being eligible to engage in future law practice, that the directionality and content of the Petitioner's ideation patterns would then have to conform to those ideation and thought patterns deemed acceptable to the state employee doctor, IME, and to the PDJ, his employer.

C.R.C.P. § 251.30 mandates that the same standards and procedures and rules regulating disability status cases apply in the reinstatement

phase as those rules applied in the first instance during the pre-trial and trial phase of the case.

Petitioner sought from the PDJ court, prior to trial and at trial, unsuccessfully, to have additional time to respond to the IME's written report and conclusions finding that the Petitioner, in the view of the IME, was profoundly mentally disabled. The last such pre-trial effort was an *in limine* motion heard (and summarily denied, at the beginning of the trial in October 2009. Petitioner sought, unsuccessfully, from the hurried process of the PDJ court to have time to have an MRI completed by his own medical team. Petitioner requested additional time because of the unavailability of his doctor to see Petitioner until the time of his previously scheduled annual physical.

Petitioner wanted time to prepare his medical defense and to have independent medical tests conducted by his own doctors, as appropriate, to refute the speculations of the state geriatric doctor that led to his subjective opinion that Petitioner is obviously profoundly mental ill. And that time would have been used, prior to trial, to create an evidentiary foundation and expert witness objective basis to respond and/or rebut the state IME's subjective conclusions and speculations about Petitioner's medical condition and psychiatric profile.

In the process below, Petitioner challenged, on various grounds, including constitutional grounds, how the rules were being applied in his case, but to

no avail. The November 10, 2009 order of the PDJ (See Appendix A hereto, pages 2 through 10) was timely appeal pursuant to C.R.C.P. § 251.27 to the state supreme court, again to no avail, the Supreme Court issuing a one word order of "Affirmed" on January 21, 2011 (Appendix A, page 1).

IV. Argument

A. An order granting certiorari is warranted for the purpose of examining whether a reversal of an order and mandate of the Colorado Supreme Court must be granted by this Court on 14th amendment grounds because the Colorado orders appealed from here protect state action and harbor what may be a void order which caused fundamental rights of Petitioner guaranteed by Section One of the 14th Amendment to be demolished.

Section one of the14th Amendment to the U.S. Constitution provides that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its

jurisdiction the equal protection of the laws.

This case presents a fact sequence which necessitates this Court's review and intervention to remedy the injustice suffered by Petitioner. The injustice suffered involved state action by state actors which caused the destruction of Petitioner's rights to procedural and substantive due process of law, the equal protection of the law to which Petitioner is entitled as a citizen and taxpayer, destroyed the Petitioner's professional reputation and law practice and obliterated other fundamental rights, including Petitioner's first amendment rights.

The applicable Standard of Appellate Review is Strict Scrutiny

Petitioner, in this appeal, is *not* pegging his standing in this appeal, or arguments made here and later, if at all, to the idea that a citizen-taxpayer's mental health status or one's (alleged) disability status, considered separately, thereby places the person into a 'suspect class' deserving of a strict scrutiny standard of appellate review.

To the contrary, Petitioner's right to have a strict scrutiny standard of appellate review applied by this Court in this case exists under law because Petitioner's fundamental rights were impermissibly infringed upon by the 'wall-to-wall' state action below.

McDonald v. City of Chicago, 130 S. Ct. 3020 (2010), *Lawrence v. Texas*, 539 U.S. 559 (2003), 123 S. Ct. 2472, and *Anupengquist v. Oregon Dept. of Agriculture*, 553 U.S. 591 (2008), 128 S. Ct. 2146 are recent cases which discuss at some length the history of the 14th amendment and its applicability. These cases also review the various considerations taken into account by courts when they have been called upon to address the question of whether or not a strict scrutiny standard of appellate review ought to be applied in a given circumstance.

The above three cases, in essence, outline the general boundaries, or 'reach', of Section One of the 14th amendment (involving state action, due process and equal protection of the law, as well as fundamental rights). The following two paragraphs attempt to very briefly outline counsel's understanding of the current state of the federal law and the current views of the various courts on the issue of when the strict scrutiny standard ought to apply in 14 amendment cases.

Generally a strict scrutiny standard of appellate review applies based on the constitutional conflict at issue regardless of whether the governmental entity involved is a federal or state taxpayer-funded agency. Petitioner's situation happens to involve state, not federal action. The rules involved in this case, the mandate(s) and other state actions affecting the Petitioner, in principle at least, must generally satisfy three prongs to survive within the framework of the strict scrutiny standard of appellate review.

First, the rules or state action(s) or state laws under strict scrutiny testing must be justified by a competing governmental interest. Second, the law, policy or rules at issue must be narrowly tailored to achieve that goal or interest. And third, the rules, law or state-administered policy must be the least restrictive means for achieving that interest. Under all such tests the rules used to attack Petitioner's mental health status below must fail on constitutional grounds.

The Court must apply the strict scrutiny standard of review in this case (should it decide to take up this case) because it involves fundamental and constitutionally protected rights (e.g., the right to one's livelihood and property, the right to privacy relative to medical records, the right of free speech in one's role as an advocate for others, and the right to be free from unlawful activity by the public sector acting beyond the boundaries of the governmental entity's subject matter jurisdiction).

The case law generally supports the notion that when state laws, and rules promulgated thereunder, limit the free exercise of someone's fundamental rights, such laws and rules made thereunder are unenforceable.

Applying the general principles enunciated in those three Supreme Court cases, and the existing law and constitutional principles applied therein, this Court is required to weigh, in Petitioner' case, the asserted governmental interest advanced by the OARC and the PDJ on behalf of the state against

Petitioner's fundamental rights to privacy and livelihood.

Petitioner urges that his case, on appeal here, is well within the reach of the 14th amendment as its boundaries are currently outlined in the cases cited above. This is so because the fundamental rights of Petitioner were obliterated by actions of various state personnel and their agents. Those state actors included state employee, Dr. Frederick Miller, the geriatric IME hired by the PDJ to attack the Petitioner's mental health status and psychiatric profile.

Dr. Miller functioned as the sole witness used at trial against the Petitioner. The PDJ's IME and his subjective opinions and speculations, and his testimony, became the sole evidentiary basis supporting the PDJ's ultimate conclusion on November 10, 2009 that he agreed with his IME and his subjective assessments that Petitioner is so profoundly mentally ill as to be unfit to practice in Colorado state courts.

This case is one where there was in effect 'wall-to-wall' state action bearing down on every phase of the Petitioner's prosecution and his later adjudication that Petitioner is so mentally disabled somehow that he was and is unfit to practice law in the state courts in Colorado. Thus a strict scrutiny standard of appellate review is applicable. No lesser standard of review would adequately protect the rights of the Petitioner or vindicate the injustices suffered in the processes below.

Summary of applicable federal constitutional principles and how they conflict with the state court framework involved in the case below

The Colorado state supreme court's rule-making authority is described in Section 21 of Article VI of the Colorado State Constitution. The State Constitution grants to the judicial department of state government the power to promulgate *rules governing court procedure*, but the question remains whether a particular rule or statue is procedural or substantive. *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980). (Emphasis added).

The general assembly is free to fashion substantive rules which reflect policy judgments that may affect procedures in the judicial system. *J.T. O'Rourke ex rel. Tenth Judicial Dist*, 651 P. 2d 407 (Colo. 1982). When a statute and rule conflict, the conflict is resolved by determining whether the matter affected is "substantive" or "procedural". The test for distinguishing procedural from substantive matters requires an examination of the purpose of the statute: if the purpose is to permit the court to function and function efficiently the statute must yield to the rule' whereas, if the statue embodies a matter of public policy, the statute controls. *People v. Prophet,* 42 P.3d 61 (Colo. App. 2001).

As noted in a previous section of this Petition, the Colorado state constitution allocates solely to the general assembly the power to create courts which function underneath the state supreme court. The PDJ court and the OARC personnel, at least as they

operate on a day-to-day basis in service to the PDJ court, seem to owe their allegiance to the PDJ court itself and not to the broader principles (to advance the search for truth and to advance justice) to which other judicial officers serving in the conventional court process owe their allegiance.

Most average citizens live out their lives 'on the 'bottom shelf', i.e., on the 'ground floor' of reality. The lofty idealism expressed in court opinions and the aspirational elements of law and the rules used to implement the law are too often relegated to a conceptual realm that seems, at times, beyond the reach and grasp of the average citizen-taxpayer's comprehension. Public sector and private sector personnel, however, seem to get themselves into deeper and deeper waters when they forget the fundamental principles behind the law and how life-altering it can be for the taxpayer-citizen affected by court orders under which they have to live out the rest of their lives.

It is therefore any wonder the OARC and PDJ 'public sector' processes and the PDJ court functions which occur under an extra-constitutional structure (if that be the case in this situation in the view of this Court) get themselves into much trouble if the orders issued by them are void because the court process is unlawful to begin with. The OARC and the PDJ also step into deep waters when the substantive processes they advance in their work supposedly for the state (but actually for the PDJ for his own sake when he puts on his disability 'hat' as opposed to his punishment/discipline 'hat' and

makes decisions in that group of cases) violate, as here, the fundamental rights of a person put through the OARC/PDJ juggernaut.

The Colorado system as it applies to disability cases, even if lawful, is substantively unfair as a matter of federal law

The Colorado system as it applies to attorney disability cases is an archaic throwback to an earlier era when someone suspected of being mentally ill was automatically stigmatized by dint of the accusation itself. And the OARC and PDJ and his IME acting and employed by the state know and use that reality against lawyers, as they did in Petitioner situation below.[4]

In short the Colorado disability rules schematic is a throwback to a 1950's and 1960's (and earlier) mentality; the disability rules set out in C.R.S. § 251.1 *et seq.* in Colorado, though updated in the 1990's, reflect the attitudes and ignorance that carries over from a near-Neanderthal-like age.[5]

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[4] It is as if Colorado authorities have never even heard of the Americans with Disabilities Act and similar legislative developments in past years, legislation which offers at least some protections to persons that either have mental disabilities or that are wrongfully accused of having such disabilities

[5] Many states such as Florida, in contrast to Colorado system of dealing with lawyers accused of being mentally ill by an ex-client or somebody else, offer statutory protections and much fairer and orderly process not so riven with political overtones, financial considerations and undisclosed agendas The Florida (and many other state systems) of hearing and adjudicating

In that era criminals were far less to be feared than someone accused of being mentally ill. Within that rules structure, therefore, the lawyer accused of being mentally ill enjoys far fewer protections in the PDJ and OARC process than lawyers accused of violating their oath.

The Colorado rules as they pertain to lawyers accused by the state of being unfit to practice law due to profound mental illness foster a system peopled with state personnel that feel (due to their positions of state power and the immunities they thereby enjoy) they have a 'free shot' against lawyers that the state attorney general (in civil cases) and prosecutors (in criminal cases) do not have within the rules structure associated with routine civil process and criminal process in the state court system.

All this has led to the impression held by Petitioner since undergoing the state-sponsored process below that the attitude and treatment against Petitioner and his efforts to challenge the

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whether or not a lawyer is so mentally ill as to be unable to practice law in contrast to the Colorado system is a somewhat more enlightened and up-to-date structure In Florida, for example, the lawyer accused (rightly or wrongly accused) of being unfit to practice law because of mentally illness gets all the protections of the Florida Mental Health Act, and all procedural and substantive law process attendant thereto, during the adjudicatory process where the lawyer's mental health has been put at issue by somebody Petitioner is currently an active, non-resident member of the Florida bar (and has been continuously since 1977)

process, and how it has damaged him and damaged his law practice and reputation can be summed up in this way: "Mr. Coates, if you don't like it (i.e., don't like the way the civil justice process is treating you and your clients), too bad. We own the system, you don't, goodbye."

The process below led to a substantial injustice suffered by the Petitioner

Another example of the procedural and substantive law injustices suffered by Petitioner below is that in many instances pre-trial proceedings and hearings before the discipline judge were demanded by the Judge and OARC personnel with only a few hours of notice (by way of threatening calls from the OARC or from the Office of the Presiding Disciplinary Judge) demanding same day attendance at a previously unscheduled hearing or status conference. Such was done to intimidate, bully and threaten the Petitioner. The PDJ seemed to take disability cases personally and brought and angry and bullying attitude to the proceedings. Anger of state-paid judicial officer, and the officer's propensity to be a bully, simply does not belong in fair and fairly-administered adjudicative proceedings.

Petitioner is not an employee of the OARC personnel or the PDJ, yet was treated by the OARC and PDJ personnel as if he was an errant staff employee at their beck and call. Public sector personnel such as the OARC personnel Petitioner encountered in this experience seemed themselves to

be very inexperienced in trial practice and had no conception of what damage is created to a professional's reputation and ability to function in the private sector, in a professional law firm setting when the attorney is stigmatized and tagged with the label of being profoundly mentally ill. There is also the 'Damocles Sword' effect during the lengthy run up to the final order of the PDJ court.

In essence the public sector personnel and staff in the OARC and the PDJ act as if they get a 'free shot' at the accused lawyer and a free shot as against his property interest, his reputation, his rights to defend himself from false allegations and the right to privacy. The state paid personnel and their agents such as the state employee doctor used frequently by the PDJ court in its disability cases, add up to an explosive mixture of arrogance and mean-spiritedness directed against lawyers accused by the state of being mentally ill.

Dr. Frederick Miller is the state's 'go-to-guy' the state routinely uses (and has used for years and years) when it needs an IME's superficial subjective opinion about the mental health status of a lawyer subject to the disability determination process. The state 'unleashed' the geriatric state-employee to attack the accused's attorney's mental health status, all for the purposes of 'unseating' the lawyer, the Petitioner, for the benefit of political constituencies unnamed and unidentified by the OARC and PDJ.

B. Whether the manner in which C.R.C.P. § 251.1 *et. seq.* is used, as in this case, by the state, to

attack an attorney's identity and mental health status during the pendency of civil litigation in which governmental entities are involved, violates Section One of the 14th Amendment.

Petitioner's rights to procedural and substantive due process of law were violated in this case. The actions of two state officials described in the previous section of this Petition led to the extinguishment of Petitioner's livelihood, his reputation and led to the destruction of his principal income-producing asset for his family, Petitioner's law office.

Petitioner had, throughout the process below, the impression that it was hard for the punishment and discipline judge, the PDJ, to 'switch gears' from one prong of his dual role as punishment and sanction judge in discipline cases to the other prong of his dual role. The other prong of his dual role is to serve as the sole hearing officer hearing and adjudicating allegations made by the state that a lawyer is so profoundly mentally ill as to be unfit to practice law.

And these attitudes displayed by the PDJ below, along with the rules empowering him, perhaps explain the PDJ's discriminatory treatment of lawyers who are before the PDJ process accused of being mentally ill and therefore unfit to practice law. The PDJ treated the Petitioner, and seemed to treat other lawyers in the disability juggernaut at the OARC and PDJ process as well, as mere errant employees of the PDJ. An attitude developed

somewhere, it seemed to Petitioner, that the PDJ and OARC personnel are in an employer role and the alleged disabled lawyer is merely an errant employee instead of what the lawyer actually is, an officer of the court and independent license holder not employed either by the OARC or the PDJ.

PDJ, acting alone as sole decision maker in disability case, under C.R.C.P. § 251.16, is not subject to voter retention elections as are all other judges and state appellate judicial officers in the Colorado judicial retention system. Hence the PDJ, in disability cases, gets an immunized 'free shot' at the accused lawyer if he happens to dislike the personality of the accused for some reason and the PDJ operates beyond the reach of any voter.

The process itself is structured under the rules to be outside the constraints that normally attend judicial process and there is no consequence to the PDJ if he errs in application of the rules or if, by his orders, he demolishes civil rights of an accused lawyer. The OARC personnel and the PDJ simply move on to the next file, to the next case and do not look back at the 'roadkill' they leave behind them. It is a highly impersonal, angry and hostile system.

The OARC argued in its response brief during the state appellate phase of the case below, that Petitioner did not have standing, on appeal, to challenge the disciplinary rules on constitutional grounds or any other grounds and therefore the appeal of a PDJ order (to the state supreme court) on the basis of a challenge to the process and the rules

must fail as matter of law. This argument apparently succeeded because this very issue raised in the appeal and adjudicated below, in essence, merged into the January 21, 2011 disposition of case by the state supreme court.

The Petitioner suffered through an Orwellian/Kafkaesque/Totalitarianism approach by the OARC and the PDJ court taken with respect to his case. The semi-secret process and 'wizard behind the curtain' system of this process placed Petitioner in the role of an 'at risk' adult alleged to be mentally ill. The process then proceeded to act toward the 'at risk' adult, Petitioner, in an abusive manner hostile to the Petitioner's fundamental rights. The outcome below stemmed from an angry and hostile process sponsored with taxpayer monies and used to attack the fundamental rights of persons like Petitioner.

Reinstatement to Law Practice in Colorado

Beyond this litany of injustices suffered below in Petitioner's situation, the reinstatement process (set out in C.R.C.P. § 2551.30) offers only hollow and empty promises that any greater protections will be afforded the attorney in a reinstatement proceedings since the rules for reinstatement mandate that the same unilateral PDJ process, same IME rules and other 'chokepoint' features of the OARC/PDJ process shall apply. The OARC and PDJ reinstatement process therefore operates as little more than a further 'chokepoint' against the accused lawyer and violates the equal protection clause of Section One of the 14th amendment to the U.S. Constitution.

The reinstatement process. Petitioner argued unsuccessfully in the appeal phase below, compels the PDJ, his IME and the OARC functionaries, to once again preside over the accused using identical process and rules as used in the first instance (i.e., at trial in the prosecution administrative phase prior to trial). The PDJ can and will use the same state-paid IME, Dr. Miller in this situation, in the reinstatement phase if there is one, to inspect and assess the new 'state of mind' of the accused lawyer.

Even if the lawyer somehow survives the state's reinstatement juggernaut, or there is a change of judge or something occurs, neither the state nor anyone else can, through *sua sponte* process or otherwise, 'unring' the bell and restore the professional reputation of the accused lawyer nor restore his private business activities, return his clients or resurrect his former law practice.

The state court appellate process simply amounts to a kind of status quo preservation, 'circle the wagons' dynamic if, as here, an attorney tries, in a state appeal, to challenge the disability determination process at the PDJ court that he has just been through. In fairness, the state supreme court when it hears appeals from its own PDJ court, must consider the fact that most cases coming to it from the PDJ court involve very serious matters which involve protections of the public from lawyers accused of and convicted (in the PDJ court process) of violations of the attorney oath.[6]

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[6] As stated in papers filed on appeal, the complaints of Petitioner are solely confined to the PDJ's disability function—

This appeal is not about the majority of cases adjudicated by the PDJ, it is 'only' about Petitioner's case adjudicated below. Notwithstanding some case law that a 'class of one person' test must be applied on a restrictive basis when a petitioner tries to get a strict scrutiny appellate standard of review applied to his or her case, the 14th amendment is either preserved or maligned one-person, one-case, at a time in most instances. This is especially so in cases involving licensed attorneys given that one attorney's situation can never be exactly the same as another's or any other attorney's situation for that matter. Each circumstance and case is unique. Petitioner urges here, as he unsuccessfully urged below, that a 'one size fits all' dual function, dual purpose set of rules applicable to both disability and discipline cases is inherently unfair.

As the record below will demonstrate, the state employee doctor/IME would have to certify: a) that the Petitioner is on psychotropic drugs or other chemical therapies and b) that as a result thereof it satisfies the elderly state employee doctor, the PDJ's hand-picked IME, based upon the IME's new, updated assessments that the Petitioner is sufficiently 'under control' using psychotropic or other chemical therapies, to be 'let loose' on the public once again to resume the practice of law in Colorado state courts.

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the rules covering grievance process and attorney discipline procedures are not specifically at issue in this case, but both circumstances are covered in the same set of deeply flawed rules (deeply flawed if tested using federal constitutional standards)

The Petitioner also complained during the appeal phase below, to no avail, about the PDJ's use of appointed counsel assigned to Petitioner whose function was supposedly to represent the Petitioner in the process below, such appointed representative hand-picked by the PDJ to carry out the PDJ's and OARC's apparently back-channel instructions. The lawyer assigned to the Petitioner for part of the pre-trial, trial and post-trial phases of the case below, a lawyer who supposedly represented Petitioner, but in actuality seemed to represent either himself or the OARC and the PDJ, in effect and reality acted as a kind of 'shadow functionary' for the PDJ and the OARC as against the Petitioner.

The OARC and PDJ also use the isolation of the disability process itself against the individual defendant-lawyer alone in that system, since there is no means by which the lawyer can identify what is going on in other similar cases in the disability prosecution system. The PDJ court process knows full well it can isolate the accused during the process and attack his fundamental rights without a great deal of oversight by the state supreme court or anyone else in authority to act as a check on the administrative state functionaries that have violated the accused's constitutional rights. Even if, as here, the lawyer later challenges the OARC and PDJ process and the orders entered against him, there is little more than a 'circling the wagons' in favor of the state personnel which occurs in the state appellate phase of the case.

It might seem inherently fair that lawyers accused of being unfit to practice law because a state-paid expert witness says they are unfit to practice would receive, under the dual function rules, at least as much procedural protection during the prosecution phase of their disability case, as lawyers accused of being rakes and thieves, liars and substance abusers and physically and/or verbally abusive in their conduct toward others and other conduct violations involving the attorney's oath. This is not so in Colorado. The alleged mentally ill man (or woman), under the rules discussed above, gets *far less process protections* in a politically charged atmosphere at the discipline/punishment court than do attorneys accused of crimes and other conduct violations involving the attorney's oath.

The PDJ court has become a kind of 'political' clearing house for members of the practicing bar

Thus the Colorado PDJ court process can and does apply disproportionately harsh standards to the accused in the disability cases it prosecutes as compared to the cases involving violations of the attorney's oath. Where the PDJ process has never been 'vetted' at the state general assembly and has never been made to conform its structures to other courts of record in Colorado (which must be created by the general assembly in any event) such circumstances lead, as here, to a dangerous 'politicalization' of the judiciary in general.

In that flawed, politicized and highly personalized structure (tied to the personalities and day-to-day feelings of the PDJ court personnel and the OARC personnel serving the PDJ court) the PDJ and his personnel can and do 'play favorites' in cases involving members of the practicing bar, punishing and rewarding those it likes and dislikes in a secretive process that badly needs, from top to bottom, the disinfectant of the light of day which this Court can bring to bear on a badly broken state process.

The remedy often suggested in the popular media is to do away with 'national control', demolish most of the functions of the federal government and thereby 'restore' all but a few governmental functions to local state control so that citizens' rights are more protected than otherwise. Yet it is the experience of Petitioner, especially in light of his

experience with the local process which led to the destruction of his livelihood and reputation in this instance below, the more local the control over the individual and his fundamental rights, the less enlightened and less-protective of those fundamental rights the process becomes.

Local authorities, especially ones protected by rules that permit a kind of 'secret' and immunized process such as the OARC and PDJ court process which functions outside normal public scrutiny, seem to abuse their immunity from outside scrutiny when they act as functionaries for the state and administer justice to the attorney-citizen-taxpayer in the circumstances presented in this case. Hence the need for federal intervention in this case so that local officials be enlightened to their broader ethical and legal responsibilities to citizen taxpayer they attack using their state process in their roles as functionaries for the state.

In the OARC and PDJ processes in Colorado political expediency and administrative expeditiousness trump ordinary concern about protecting rights of mere license holder-citizen-taxpayers. In short, in response to the popular conception or notion that local control of 'things' is better than control using national standards, Petitioner knows that local totalitarianism and oppression by local authorities can be just as dangerous (to one's fundamental rights) as national totalitarianism and oppression of fundamental rights. Both involve oppression that stems from unchecked exercise of government power.

States themselves, when all is said and done, are inherently little more than spiritually empty contrivances which operate (through their 'machine operators') like giant machines that have no souls. As the lines between the public and private sectors disintegrate more and more every day as the federal government, for example, comes to own more and more formerly privately owned businesses, government workers in state offices can hardly be expected to function much differently than personnel functioning within the commercial grind of corporate, machine-like entities.

Both types of man-made structures, public and private entities, depend upon compliant functionaries to carry out the commercially expedient objectives of the organizations which seek expediency and convenience above all other considerations. Both are peopled with 'machine operators', i.e., human beings, most possessing some or all of the common frailties attendant with membership in the human race, itself a flawed species prone to error and pride, jealousy and greed.

However, the question for the Court[7] to decide in this instance, if certiorari is granted, will not

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[7] In general, it would seem Lady Liberty herself, and the individual liberties of her citizens, has become something of a damsel in distress in contemporary 'modernity' as the nation increasingly finds itself in deeper and deeper waters financing its forward operations with borrowed monies instead of current tax revenues In an age when the distinctions and necessary boundaries between the public and the private sectors are disintegrating (as the government, for example, acquires

center on politically-charged and inherently unresolvable issues such as discussed in the immediately preceding paragraphs. This case, if it goes forward to briefing and argument, will have a much narrower focus, i.e., it will focus on the question of whether the rules which obliterated

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ownership in more and more privately-owned businesses) the average citizen 'out here' In the meantime sees federal courts as places increasingly overwhelmed by the demands of litigants and appellants Many such litigants seem ignorant of the important relationship and balance between rights, duties, privileges and immunities, they, clamoring only for the first of those four inherently interrelated legal categories—it has become more and more a 'what's in it for me?' world The common public perception is that the court process is there solely to protect alleged rights of a person who perceives that he or she has suffered an injustice or loss of perceived or actual rights; the court is not 'there' to enforce duties which the citizens hold in tandem with their rights as citizens As the federal oversight role increasingly diminishes in favor of corporate America (and its incessant commercial demands) and against the protection of individual citizens' rights and substantive liberties, citizens, as in this case, are largely left to try to fend for themselves in a hostile commercial environment too often dominated by those in power whose power derives from the greater cash resources of the few as compared to those of the many less financially fortunate The citizen taxpayer often has to fend for oneself as against the public sector personnel in an angry and hostile, and very politicized, state government environment served by state employee functionaries who generally and all too often have their own self-interest in mind (protection of *their* jobs and *their* benefits from the state, from any day-to-day interruption and inconvenience) Those are compelling interest to the government worker, indeed, but such interests often seem to predominate over attention to considerations like the well being of the public (they are supposedly serving) advancement of truth and justice and respect for the rule of law

Petitioner's fundamental rights in this situation pass constitutional muster when fairly tested by higher authority and under a strict scrutiny standard of appellate review to which Petitioner is entitled as a matter of law in this forum.

The OARC PDJ administrative court functions, at least as applied in Petitioner's situation, seem to serve and operate largely as a 'chokepoint' which is impossible to get to the other side of if one is unfortunate enough to be subjected to that taxpayer-funded, state sponsored juggernaut which Petitioner endured and is enduring in these circumstances.

In the process below Petitioner 'hit a wall' of injustice at that impossible 'chokepoint' of administrative court process in this case. As a result the Petitioner's/lawyer's fundamental rights to due process and equal protection of the law were strangled to death and obliterated forever by the OARC and PDJ court and its pre-trial process. The fact the state functionaries which operated the process and system against the Petitioner seem to carry out their duties and function in such a gleeful manner as against their far less powerful adversary, the Petitioner, and given their rule-mandated immunities, added up to an overall picture which did not sit at all well with Petitioner.

VI. Conclusion

A writ of certiorari to the Colorado Supreme Court should issue from this Court so that this Court may review the Colorado OARC and PDJ system and its rules and their application in disability cases and to test whether or not the 14th amendment rights of Petitioner were impermissibly abridged and later demolished by the oppressive and unlawful actions of various state-paid Colorado state officials and their paid state agents acting under color and protection of state law.

Respectfully submitted,

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Original Proceeding in Disability
Appeal from the Office of the Presiding Disciplinary Judge,
2009PDJ038

In the Matter of Theodore Patrick Coates.

Supreme Court Case No:
2009SA359

ORDER & MANDATE

This cause having been brought to this court on an appeal of an Original Proceeding in Disability to review the Order of the Presiding Disciplinary Judge, and having been heretofore submitted to the consideration and judgment of the court, and now being sufficiently advised in the premises,

IT IS ORDERED and adjudged that the Order of the Presiding Disciplinary Judge is, AFFIRMED.

NOW THEREFORE, jurisdiction of this cause is returned to the office of the Presiding Disciplinary Judge.

WITNESS, the HONORABLE MICHAEL BENDER, Chief Justice of our Supreme Court and the Seal thereof, affixed at my office in the City and

County of Denver, this 21st day of January, 2011.

[COURT SEAL]

SUSAN J. FESTAG,
Clerk of the Colorado Supreme Court
/s/ [Illegible]
Deputy Clerk

Case Number: 2009SA359
Caption: In the Matter of Theodore Patrick Coates

CERTIFICATE OF SERVICE

Copies mailed via the State's Mail Services Division on January 21, 2011 [Illegible Initials]

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SUPREME COURT, STATE OF COLORADO
ORIGINAL PROCEEDING IN DISABILITY
BEFORE THE OFFICE OF THE PRESIDING
DISCIPLINARY JUDGE
1560 BROADWAY, SUITE 675
DENVER, CO 80202

Petitioner:
THE PEOPLE OF THE
STATE OF COLORADO

Case Number:
09PDJ038

Respondent:
THEODORE PATRICK COATES.

ORDER TRANSFERRING RESPONDENT TO
DISABILITY INACTIVE STATUS PURSUANT TO
C.R.C.P. 251.23(c)

On October 7, 2009, the Presiding Disciplinary Judge ("the Court") held a Disability Hearing in the above-captioned matter. Lisa E. Frankel appeared on behalf of the Office of Attorney Regulation Counsel and Craig L. Truman appeared with Theodore Patrick Coates.

Based on the evidence presented during the Disability Hearing, the Court TRANSFERS Theodore Patrick Coates, Attorney Registration No. 07544, to DISABILITY INACTIVE STATUS pursuant to C.R.C.P. 251.23(c), EFFECTIVE IMMEDIATELY, pending further order of the Court.

DATED THIS 10TH DAY OF NOVEMBER, 2009.

/s/_____ [Court Seal]
WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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